

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ANSELMO RODRIGUEZ,
Plaintiff

v.

CORSA TRANSPORTES SA DE CV AND
GERARDO TORRES GUERRERO
Defendants

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CAUSE NO. 5:17-cv-255

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Corsa Transportes S.A. De C.V. (hereinafter referred to as "Removing Defendant") hereby give notice and remove this case to the United States District Court for the Southern District of Texas, Laredo Division. The grounds for removal are as follows:

1. Plaintiff ANSELMO RODRIGUEZ (hereinafter "Plaintiff"), commenced this action by filing Plaintiff's Original Petition (hereinafter referred to as the "Original Petition") on July 28, 2017 in the 49th Judicial District Court of Webb County, Texas. The case was docketed as Cause No. 2017CVA001507D1 and styled *Anselmo Rodriguez v. Corsa Transportes S.A. De C.V. and Gerardo Torres Guerrero*. Copies of the documents that have been filed in the state court file and served on Removing Defendant, including, Plaintiff's Original Petition and Requests for Disclosure and Citation, are attached hereto as Exhibit A.

2. Without admitting any facts alleged in Plaintiff's Original Petition or that Plaintiff's Original Petition states any claim for relief, Plaintiff purports to bring claims for negligence and seeks to impose liability on Removing Defendant under the doctrine of *respondeat superior*. (Plaintiff's Original Petition, Paragraphs V & VI, Exhibit A.)

DEFENDANT'S NOTICE OF REMOVAL

3. Removing Defendant is entitled to remove this action to this Court pursuant to 28 U.S.C. §§ 1332 and 1441 because there is complete diversity of citizenship between the parties: Plaintiff is a resident of Webb County, Texas; Defendant Gerardo Torres Guerrero is a non-resident of Texas who lives in Mexico; and Defendant Corsa Transportes S.A. De C.V. is a foreign Mexican company.

4. Plaintiff claims that the alleged negligence caused him to suffer severe and debilitating injuries. (Plaintiff's Original Petition, Paragraph IV, Exhibit A.) In addition, Plaintiff seeks damages in excess of \$1,000,000.00 (Plaintiff's Original Petition, Paragraph VII, Exhibit A.)

5. Plaintiff asserts that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as required for diversity jurisdiction pursuant to 28 U.S.C. § 1332.

6. The Fifth Circuit has held that a removing party may establish jurisdiction by a preponderance of the evidence by demonstrating that it is "facially apparent" from the complaint that the claim likely exceeds \$75,000.00. *Allen v. R.H. Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995). The removing party may also establish jurisdiction by setting forth facts that support the requisite finding that the amount in controversy exceeds \$75,000.00. *Id.* A district court must first examine the complaint to determine whether it is "facially apparent" that the claims exceed the jurisdictional amount. *White v. FCI USA, Inc.*, 319 F.3d 672, 675 (5th Cir. 2003). If it is not facially apparent, the court may rely on "summary judgment-type" evidence to ascertain the amount in controversy. *Id.* "Remand is proper only if the plaintiff has shown it is 'legally certain that his recovery will not exceed the amount stated in the state complaint.'" *Whitaker v. Wells Fargo Bank, N.A.*, No. 4:11-CV-752, 2012 U.S. Dist. LEXIS 27028, at *9 (E.D. Tex. Feb. 9, 2012) (quoting *In Re Exxon Chemical Fire*, 558 F.3d 378, 387-88 (5th Cir. 2009)).

7. Based on the foregoing allegations and in light of the damages that are being sought in Plaintiff's Original Petition, the amount in controversy clearly exceeds the sum of \$75,000.00, exclusive of interest and costs. Thus, this Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court pursuant to 28 U.S.C. § 1441.

8. Removal is timely. Defendant Corsa Transportes S.A. De C.V. was served with the Summons and Plaintiff's Original Petition on November 24, 2017. (Return of Service, Exhibit A.) Therefore, this removal petition is timely filed under 28 U.S.C. § 1446(b), because this removal petition has been filed within thirty (30) days of receipt of Plaintiff's Original Petition by Removing Defendant and from when Removing Defendant could ascertain that the case was removable.

9. All defendants who have been properly joined and served in the above-referenced cause consent to the removal of this action in accordance with 28 U.S.C. § 1446(b)(2)(A).

10. Written notice of the filing of this Notice of Removal shall be filed with the 49th Judicial District Court of Webb County, Texas and served on all parties pursuant to the provisions of 28 U.S.C. § 1446(d).

11. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this District.

12. Copies of all pleadings, process, orders, and other filings served on Removing Defendant in the state court suit are attached hereto as Exhibits A, as required by 28 U.S.C. § 1446(a).

13. Removing Defendant will demand a trial by jury in its Original Answer.

14. Removing Defendant reserves, without admission or waiver of any allegations and/or claims, all of its defenses to Plaintiff's Original Petition. Nothing set forth herein shall be construed as a waiver or admission of any allegations or claims.

WHEREFORE, PREMISES CONSIDERED, Defendant Corsa Transportes S.A. De C.V., respectfully removes the case pending against them in the 49th Judicial District Court of Webb County, Texas to the United States District Court for the Southern District of Texas, Laredo Division.

Respectfully submitted,

BRENNIG & ASSOCIATES, P.C.

By: /s/ Charles C. Brennig III
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CERTIFICATE OF SERVICE

I hereby certify that on the December 18, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filings to all counsel of record.

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/s/ Charles C. Brennig III
CHARLES C. BRENNIG III